

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06/09/2002

CORAM

THE HONOURABLE MR.JUSTICE A.K. RAJAN

S.A.No.1070 of 1992

M.Kaliya Perumal,
S/o Muthan,
Kallankurichi Village,
Ariyalur Taluk. .. Appellant

-Vs-

1. Lakshmi,
W/o Kaliyaperumal,
Kallankurichi Village,
Ariyalur Taluk.

2. Minor Rogini,
represented by Guardian
and Mother Lakshmi,
Kallankurichi Village,
Ariyalur Taluk. .. Respondents

Appeal is filed against the judgment, dated 30.9.1991 in
A.S.No.173 of 1988 passed by the Sub-Judge, Ariyalur, as stated therein.

!For Appellant : Mr. M.s.Krishnan

^For Respondents : Mr. M.Richard Dhas,
for R.1 and R.2

:J U D G M E N T

This appeal is, against the order of maintenance filed by the husband.
2. The first respondent is the wife. Second respondent is the minor daughter. On the perusal of the records, it is seen that the first respondent filed an application under Section 125 Cr.P.C. in M.C.10 of 1985 before the Sub-Divisional Magistrate Court, Ariyalur and that was dismissed by the Magistrate on the ground that H.M.O.P.43 of 198 5 was filed by the appellant herein for restitution of conjugal rights against the first respondent herein and that ex parte order was passed on 30.1.1986. Since the decree for restitutiton of conjugal rights was in force, the learned Magistrate did not grant maintenance and hence dismissed the same. Thereafter, O.S.449 of 1986

has been filed for seeking maintenance and the trial Court awarded Rs.150/- as maintenance for the wife and Rs.100/- for the minor daughter. On appeal, the first Appellate Court confirmed the same. Against this, the second appeal has been filed by the husband.

3. The substantial questions of law framed is as follows:

" Whether on the facts and circumstances of the case, the lower appellate Court is correct in law in coming to the conclusion that the suit for maintenance filed by the first respondent is maintainable even if there is a decree for restitution of conjugal rights granted by a Court of competent jurisdiction ? "

4. Learned counsel appearing for the appellant submitted that there was an ex parte order for restitution of conjugal rights and hence the claim for maintenance is not sustainable when a decree for restitution of conjugal rights has been passed by a competent Court.

5. Learned counsel for the respondent submitted that after passing of the order for restitution of conjugal rights, no steps were taken by the husband to execute the decree. Therefore, the decree is null and void. The appellant had no intention to execute the decree and further, he submitted it is only an ex parte decree and hence, it was passed without the knowledge of the first respondent herein.

6. A decree passed by the Court of competent Court is valid even if it is passed ex parte, unless it is set aside by the same Court or the appellate Court. In this case, in the counter filed by the appellant herein, it has been stated that ex parte decree for restitution of conjugal rights has been passed and no steps were taken by the first respondent herein to set aside that decree. Therefore, that decree has become final and hence, merely because it was not executed or no steps were taken to execute the decree, it does not alter the value of the decree for restitution of conjugal rights.

7. Therefore, when there is a decree by a competent Court for restitution rights, the respondent in that case cannot claim maintenance. The award of maintenance to the first respondent herein by the trial Court as confirmed by the appellate Court is not valid. Hence, to that extent, the decree is set aside. So far as the second respondent is concerned, she is the minor daughter of the appellant herein. Therefore, the maintenance awarded for her is valid. This Court though is of the view that the maintenance awarded is very meagre, it cannot pass any order to enhance the claim of maintenance in this proceedings awarded to the minor. It is unfortunate that no steps were taken by the wife or the minor daughter to file an application for enhancement of maintenance in the lower Court. It is made clear that the minor daughter is entitled to file an application for enhancement of maintenance before the appropriate Court.

8. The appeal is allowed in part. The substantial question of law is answered accordingly. In so far as the second respondent is concerned, this appeal is dismissed.

6.9.2002.

Index: Yes

Web Site: Yes

vs

To:

1) The Subordinate Judge, Ariyalur.

2) The District Munsif, Ariyalur.

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